Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(2)(A)	)	CC Docket No. 97-11
of the Telecommunications Act of 1996	)	

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its
affiliated domestic telephone operating
companies

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

THEIR ATTORNEY

February 24, 1997

TABLE OF CONTENTS

SUMMARY

In order to assure that the deregulatory congressional intent of the Telecommunications Act of 1996 is accomplished, GTE urges the Commission to apply a broad reading to Section 402(b)(2)(A) which exempts common carriers from the requirements of Section 214 for the "extension of any line." The definition adopted by the Commission should accommodate extensions of a line both within a carrier's existing territory, adding to or expanding its existing network, and outside a carrier's territory. GTE believes that the definition proposed in the NPRM is too limited because it would apply only when a carrier is extending its network outside its existing territory. There is no reason to assume that a line is an extension only when service is expanded to include new geographic territory.

GTE endorses the proposal set forth in Paragraph 35(ii) of the NPRM: "any augmentation of lines in a carrier's network, heretofore subject to Section 214 certification, without distinguishing 'new' lines from 'extensions.'" This definition is consistent with past practice of treating additional lines uniformly. This definition allows the broadest reading of the statutory change and is least complicated and easiest to administer. By adopting this definition, the Commission would avoid the anomaly of second lines receiving more regulatory scrutiny than the initial extended line.

GTE concurs with the Commission that it should forbear from regulating lines considered 'new' lines, as proposed in the NPRM. In order to maintain the

congressional intent to encourage competitive entry by all carriers, including ILECs outside their territory, the Commission should clarify that it also intends to forbear from 214 authorizations for any new lines of a LEC operating as a CLEC outside its existing territory, and that these CLECs will be considered non-dominant, just as are other CLECs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996	)	CC Docket No. 97-11

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, hereby submits its comments on the Commission's *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding.[1]

I. INTRODUCTION

Section 402(b)(2)(A) of the 1996 Telecommunications Act ("the 1996 Act")[2] amends Section 214(a) of the Communications Act by exempting common carriers from the requirements of Section 214 for the "extension of any line." With this exemption, a carrier seeking to extend a line would not be required to seek authorization under Section 214 of the Act or Part 61 of the Commission's Rules. The *NPRM* seeks comment on the scope of this statutory exemption.

---

1 *Notice of Proposed Rulemaking*, CC Docket No. 97-11, FCC 97-6 (released January 13, 1997).

2 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 *codified at* 47 U.S.C. §§151 *et seq.*

The *NPRM* also solicits comment on a number of tentative conclusions concerning the meaning of Section 402(b)(2)(A).

II. SECTION 402(b)(2) WAS INTENDED TO SIGNIFICANTLY CHANGE THE EXISTING SECTION 214 REQUIREMENTS.

The 1996 Act was intended to be a top-to-bottom change in the state of telecommunications law. Congress envisioned a telecommunications marketplace characterized by expanded competition and reduced regulation. As stated, the intent of the 1996 Act is: "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[3] The congressional intent to reduce regulation is reflected in several specific regulatory amendments including Section 402(b)(2)(A), exempting extensions of lines from Section 214.

A. The 1996 Act Intended to Fully Exempt Extensions of Lines from the Current Section 214 Requirements.

GTE endorses the intention of the NPRM (at ¶9) "to give effect to the de-regulatory letter and spirit of the 1996 Act in general, and Section 402(b)(2)(A) specifically, thereby promoting competition by removing outdated barriers to entry in telecommunications markets." GTE is concerned, however, that the NPRM has embarked on a course that is needlessly complicated and complex.

---

[3] *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) ("Joint Explanatory Statement").

In order to assure that the deregulatory congressional intent is accomplished, GTE encourages the Commission to apply a broad reading to this exemption, thereby reducing 214 regulation to the fullest extent contemplated by the 1996 Act.

B. Extensions of Lines Should Not be Limited to Extending Lines Into Additional Geographic Areas.

The NPRM sets forth an exhaustive evaluation of the various congressional and judicial precedents of Section 214. Although Section 214 has applied to 'new' lines and 'extension' of lines, the Commission concludes (at ¶21) that it has not always been clear in 214 proceedings whether the 'line' at issue was a new line or an extended line. Because "extension of any line" is not defined and the relevant precedents fail to distinguish between new lines and extensions, the NPRM seeks comment on the appropriate definition.

The NPRM proposes an extension of a line to be "a line that allows the carrier to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach." Thus, under this proposed definition, extensions of lines for purposes of Section 214 would apply only when a carrier is extending its network outside its existing territory.

Although this proposed definition of extension describes one circumstance by which a line may be extended, GTE believes that this proposal is too limited. There is no reason to assume that a line is an extension only when service is expanded to include new geographic territory. An extension of a line within a

carrier's network, adding to or expanding its existing network, could also be an extension of a line and must be afforded the exemption provided in the 1996 Act.

There are several problems with limiting extensions only to those that add territory. First, the NPRM (at ¶7) recognizes that a plain meaning of 'extend' includes the concept of both expanding the 'area of' and expanding 'the scope of.' Because the definition proposed in the NPRM, however, accommodates expansions of area but not expansions of scope, it improperly excludes expansions through extended lines within the territory that the carrier already has existing network. Second, past precedent, as the Commission recognizes (at ¶17), does not distinguish whether supplementing existing network lines or increasing the capacity of existing lines were considered new or extended lines. There is no reason now to initiate such a narrow interpretation, especially in light of the deregulatory congressional intent in adopting Section 402(b)(2)(A). Finally, as discussed below, confining extensions only to lines outside the geographic territory of the carrier's existing network needlessly confuses and complicates the Section 214 requirements.

C. The Proposed Definition of Extension Unnecessarily Complicates the Process and Leads to an Untenable Result.

By defining an extension line as a line that allows the carrier to expand outside the territory its network already serves, any subsequent line added in that "extended" territory would be considered a new line since the carrier's network now serves that territory. Thus, as recognized in the NPRM, the proposed definition would create the anomaly that second lines would receive

more regulatory scrutiny than the initial extended line. Clearly, competition would not be encouraged by subjecting the second line the carrier adds to its network to regulation when the first line extending into a new territory was exempt from regulation.

D. Extensions of Lines Implies Adding to a Carrier's Existing Network Regardless of Whether the Carrier is Extending Lines Into Additional Geographic Areas.

As stated above, there is no justification for limiting an extension of a line to geographic areas outside a carrier's existing serving area. In fact, carriers often extend lines increasing the capabilities of their networks without necessarily extending the geographic scope of their networks. Nothing in the 1996 Act nor the legislative history suggests that Congress was excluding extensions within a carrier's serving area from the exemption in Section 402(b)(2)(A). Considering the deregulatory intent of this Section, the Commission should give the broadest interpretation to the exemption and apply it to all extended lines, whether inside or outside a carrier's serving area.

E. There Should be No Distinction Between New Lines and Extension of Lines When a Carrier Adds to its Network.

The Commission can avoid the problems in distinguishing between new and extended lines by adopting one of the other alternatives proposed in the NPRM (at ¶35). Specifically, GTE endorses the proposal set forth as Paragraph 35(ii)): "any augmentation of lines in a carrier's network, heretofore subject to Section 214 certification, without distinguishing 'new' lines from 'extensions.'"

As the NPRM recognizes, this definition is consistent with past practice of treating additional lines uniformly. Also, this definition allows for the broadest reading of the statutory change and least complicated and easiest to administer. The Commission would avoid the anomaly discussed above since second lines would not receive more regulatory scrutiny than the initial extended line.

F. Extensions of International Lines Must be Afforded an Exemption.

The NPRM (at ¶33) tentatively concludes that all international lines must be classified as 'new,' even those that expand capacity to countries the carrier is already authorized to serve. As discussed above with regard to domestic lines, such a narrow interpretation needlessly excludes lines which extend the scope of a carrier's service from the exemption afforded by Section 402(b)(2)(A). There are numerous carriers providing international communications through a variety of facilities. In this competitive environment, the Commission should not be concerned whether a carrier is overbuilding facilities since captive ratepayers would not be required to subsidize these actions. Once a carrier has been authorized to serve a particular international point, the Commission should encourage extensions of service on any authorized routes by affording these extended lines the exemption mandated in the 1996 Act.

III. THE COMMISSION SHOULD FORBEAR UNDER SECTION 401 FROM EXERCISING SECTION 214 AUTHORITY OVER NEW LINES OF LECs.

If the Commission adopts the definition of extension suggested by GTE above, any line augmenting an existing network would be exempt from Section

214 requirements. Although there would be fewer lines considered "new" requiring 214 authorization, GTE concurs with the Commission that it should forbear from regulating any lines considered 'new' lines.

The Commission obviously has other better mechanisms to monitor the operations of the dominant LECs through existing accounting and cost allocation rules which protect a LEC's captive ratepayers. Moreover, the NPRM notes (at ¶24) the potential danger of overbuilding facilities to the detriment of captive ratepayers is relevant only for dominant carriers in a position to pass these inflated costs to their customers. This is not the case under price cap regulation.

GTE also agrees with the NPRM that the Commission should forbear from 214 authorizations for non-dominant carriers. This should include LECs serving as competitive carriers. The Commission correctly analyzes that these new lines should be forborne. GTE believes that this analysis applies with equal force to price cap LECs in-territory as well as out-of-territory activities of these LECs as competitive local exchange carriers ("CLECs"). There should be no concern of duplicative facilities or captive ratepayers for competitive carriers. Out of their operating territory, ILECs have no market power and therefore do not have the ability to raise rates. These CLECs should be treated the same as any other competitive entrant.

IV. SEVERAL PROPOSALS IN THE NPRM REQUIRE CLARIFICATION.

A. ILECs Can Operate as CLECs Outside Their Serving Territory on a Non-Dominant Basis.

The NPRM recognizes that all domestic carriers are eligible to provide exchange telephone service on a competitive basis. The NPRM (at ¶25) recognizes that "all domestic carriers are eligible to provide exchange telephone service on a competitive basis." Based upon this, the Commission (at ¶25) tentatively concludes, correctly, that "a domestic carrier wishing to serve new territory may extend its lines to do so without obtaining Section 214 authority, as long as the carrier obtains any other regulatory approvals that may still be required." Thus, a LEC operating outside its territory as a competitive local exchange carrier may extend a line without further 214 authority.

If the Commission adopts the definition as proposed in the NPRM, once that LEC has extended a line into an area outside its territory as a CLEC, any supplementation of that extended facility would be considered a new line, requiring 214 authorization. The NPRM does not specifically indicate how these new lines by a LEC operating outside its area as a CLEC are to be treated. The Commission proposes (at ¶29), among other things, to forbear from "the in-region activities of LECs that are subject to price cap regulation." The NPRM, however, is silent with regard to these new lines by a LEC operating outside its area.

GTE believes that in order to maintain the congressional intent to encourage competitive entry by all carriers, including ILECs outside their territory, the Commission must clarify that it also intends to forbear from 214 authorizations for any new lines outside a LEC's territory and that these CLECs will be considered non-dominant, just as are other CLECs. Moreover, there is no

requirement, nor should there be, that LECs must operate such non-dominant CLECs in accordance with separation requirements applicable to interexchange LEC affiliates.[4] A LEC offering CLEC services outside its LEC serving territory has no market power, and should be encouraged as an effective competitor in this new market.

B. References to 'Region' Should be Referred to as 'Serving Territory' and Should be Confined to the Actual Operating Territory of the ILEC.

Throughout the NPRM, the Commission refers to the operating area currently served by the ILEC as its 'region.' In the 1996 Act, the term 'in-region' appears in Section 271(i)(1) with regard to requirements applicable only to the Bell Operating Companies. Section 251(h)(1), in defining an ILEC, uses the term serving area. Since regions are relevant only to BOCs, GTE suggests that the Commission use a more generic term, such as territory or serving area, when referring to the operating territory of the ILECs.

V. CONCLUSION

For the foregoing reasons, GTE urges the Commission to reduce 214 regulation to the fullest extent contemplated by the 1996 Act by applying a broad reading to the 214 exemption. GTE endorses the proposal set forth in

---

[4] While the NPRM (¶27) notes that the *Competitive Carrier* proceeding required LECs to maintain certain separate affiliate requirements in order to offer interstate, *interexchange* services on a non-dominant basis, a CLEC offers exchange and exchange access services. These conditions were not applied to these offerings.

Paragraph 35(ii) of the NPRM exempting from Section 214 certification any lines which extend a carrier's network, whether inside or outside its operating territory.

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating companies

By _____

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

February 24, 1997

THEIR ATTORNEY